IN THE HIGH COURT OF THE JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1813 OF 2004.

Sau.Sakhubai Pandurang Koli ...Petitioner
(Org.Applicant)

V/s

Smt.Asha Balu Koli & Ors. ...Respondents
(Org.Respondents)

Shri. M.A. Patil for the Petitioner.
Shri. K.V.Saste, A.P.P. for the Respondents.

CORAM : A.S.OKA, J.
DATED : JUNE 08, 2005.

P.C.:

1. Heard Shri. Patil for the Petitioner. The Petitioner is the original Applicant. In Petition under section 125 of the Code of Criminal Procedure, 1973 the Petitioner claimed maintenance against the Respondent No.1 who was daughter-in-law of the Petitioner. The Petitioner succeeded before the learned Magistrate. In a revision preferred by the Respondent No.1, the learned Sessions Judge has said aside the Judgment of learned Magistrate by holding that under section 125 of the said Code, the mother-in-law is not entitled to seek maintenance against the daughter-in-law.

2. Shri. Patil appearing for the Petitioner submittecd that the husband of the Respondent No.1,

i.e. son of the Petitioner is no more. He submitted that the Respondent No.1 is getting pension which was payable to the deceased son of the Petitioner and therefore, it is really an application of the Petitioner for maintenance from the pension amount of her son. He placed reliance on the decision of the Apex Court reported in 1987, Maharashtra Law Journal, 395(Vijaya Manohar Arbat V/s. Kashirao Rajaram Sawai & Anr., in support of his contention.

3. I have considered the submissions of Shri. Patil. The sub-section 1 of Section 125 of the said Code reads thus:

"(1) If any person having sufficient means neglects or refuses to maintain-
(a) his wife, unable to maintain herself, or
(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) his legitimate or illegitimate child(not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) his father or mother, unable to maintain himself or herself,
a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:
. Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the

husband of such minor female child, if married, is not possessed of sufficient means."

On plain reading of Section, it is obvious that the Petitioner is not entitled to claim maintenance from the Respondent No.1 who is her daughter-in-law.

4. The reliance placed by Shri. Patil on the decision of the Apex Court in the case of Vijaya Manohar Arbat V/s. Kashirao Rajaram Sawai(Supra) will not help him. The Apex Court held that if the parents are unable to maintain themselves, they will be entitled to claim maintenance from their married daughter who has sufficient means of her own independently of income of her husband. The decision of the Apex Court is based on clause (d) of sub-section 1 of section 125 of the said Code.

5. There is no error in the impugned Judgment and Order. The Petition is dismissed. It is made clear that notwithstanding the dismissal of the Petition it will be open to the Petitioner to avail of the remedies, if available, under other provisions of the law.

6. Parties to act upon an authenticated copy of this

Order.

JUDGE